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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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House Week in Review

The highlight of the week was Governor Carroll Campbell's State of the State Address, delivered to a joint session of the General Assembly on Wednesday, January 27. In his speech the governor made a renewed pitch for government restructuring, including establishment of an Executive Cabinet, a new Department of Transportation, and the absorption by the State Law Enforcement Division (SLED) of the law enforcement activities carried out by the Highway Patrol and Alcoholic Beverage Control Commission. The governor also called for budgetary reform, health care reform, educational reform, and term limits for legislators and state constitutional officers.

The House also took up 6 gubernatorial vetoes, on issues ranging from reclassification of crimes to revision of a State Cemetery Board. Of the 6 vetoes, the legislature overrode only 1 veto, that being a act naming a special purpose district in Hartsville.

Legislative Update, February 2, 1993

Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The summaries are arranged according to the standing committee to which the legislation was referred.

Agriculture, Natural Resources, and Environmental Affairs

Hunter Safety Education (H. 3255, Rep. Snow). This bill would require anyone born after June 30, 1979 to successfully complete a hunter safety course, as prescribed by the South Carolina Department of Wildlife and Marine Resources, before obtaining a hunting license in South Carolina. In lieu of completing the department's course, a person born after June 30, 1979 could obtain a hunting license if he presented a certificate issued by another state, U.S. territory, a Canadian province or another country which indicated successful completion of a hunter safety course comparable to the one offered in South Carolina. The bill states that hunter safety programs established by the Department must include the selection, training and certification of instructors, appropriate course materials and content, and criteria for successful course completion. A person in violation of these provisions is guilty of a misdemeanor and upon conviction must be fined between \$50 and \$200 or imprisoned a maximum of 30 days.

Turtle Excluder Devices (H. 3256, Rep. Snow). This bill would allow the South Carolina Wildlife and Marine Resources Department to require turtle excluder devices in all state waters inshore and seaward of the COLREG demarcation line.

Quail Breeder's License (H. 3257, Rep. Snow). This bill would change the time during which a commercial quail breeder's license is effective from the calendar year in which it is issued to the fiscal year (July 1 to June 30) in which it is issued.

Wildlife Hunting (H. 3258, Rep. Snow). This bill would make it unlawful for anyone to wound, injure or kill wildlife without making an attempt to locate the wildlife and take it into possession. Anyone violating these provisions is guilty of a misdemeanor and, upon conviction, must be fined not more than \$200 or jailed not more than 30 days.

Divers' Safety (H. 3271, Rep. McKay). This bill would prohibit a person from operating a vessel within 50 feet of another vessel or diver displaying a "diver down" flag to mark the diver's location. If the flag is displayed in a water body too narrow to allow another vessel to pass other than within 50 feet, a vessel operator could proceed past the displayed flag only at a "no wake" speed and must allow for as much clearance as is safe and practical between the vessel and the displayed flag.

A person could not engage in diving activities within 50 feet of a vessel whose occupant is fishing. A person would not violate the provisions of this bill if he fishes or displays a dive flag in an area before another person subsequently engages in diving activities or operates a vessel within 50 feet of a displayed dive flag. The bill defines a "diver down" flag as a flag which is red with a diagonal white stripe.

Unlawful Fish Species (H. 3276, Rep. Snow). This bill would expand the current list of fish species which cannot be sold, imported or possessed, or released into the state's waters, so as to include Rudd fish in this prohibition.

Flotation Devices (H. 3304, Rep. Cato). This bill specifies the type of flotation devices which must be worn by water skiers or riders of surfboards or similar objects. For the purposes of this bill, the flotation device must be a U.S. Coast Guard-approved device, Type 1, 2, 3, or 5. Furthermore, each personal flotation device must be fastened properly, in good and serviceable condition, and must be the proper size for the person wearing it.

Hazardous Waste (H. 3307, Rep. McElveen). This bill expands the definition of hazardous waste as applied to the South Carolina Hazardous Waste Management Act, so as to include all waste disposed of in a land disposal site permitted to receive hazardous waste for disposal.

Education and Public Works

Special Tags and Placards for Vehicles Transporting the Handicapped and Disabled (H. 3254, Rep. P. Harris). Under this bill, an agency, organization or facility that transports a handicapped or disabled person would be allowed to apply for a special license tag for a vehicle designed to transport a handicapped or disabled person if the vehicle is titled in the name of the agency. Proof that the agency, organization or facility transports a handicapped or disabled person would be in the manner prescribed by the Department of Highways and Public Transportation. A certificate from a licensed physician would not be required to apply for the special license tag.

An agency, organization or facility which transports a handicapped or disabled person could apply for each vehicle for a permanent distinguishing placard, for the purpose of obtaining parking rights and privileges. Application would be through the Department of Highways and Public Transportation. The placard would be used on passenger vehicles which transport a handicapped or disabled person who does not qualify for a special license plate. A certificate from a licensed physician would not be required and proof that the agency, organization or facility transports a handicapped or disabled person must be in a manner prescribed by the Department. A \$1 dollar fee would be charged for each placard issued. The permanent placard could be issued and renewed for a period of 4 years from the date of original issue.

Lighting Equipment on Vehicles (H. 3262, Rep. Kirsh). This bill would amend state law so as to require every trailer and semitrailer, regardless of weight, to contain 2 clearance lamps on the front of the vehicle; 2 side-marker lamps on each side; 2 reflectors on each side, and 2 clearance lamps, 2 reflectors and 1 stop light on the rear. Currently these lighting requirements include only trailers and semitrailers with a gross weight in excess of 3,000 pounds. Furthermore, the bill would require each pole trailer with a gross weight of 3,000 pounds or less to contain 2 reflectors on the rear, and if the pole trailer is so loaded or is of those dimensions as to obscure the stop light on the towing vehicle, then the towing vehicle must be equipped with a stop light.

Weight Limits on Secondary Roads (H. 3275, Rep. Kirsh). This bill would limit the weight of vehicles operating on the state's secondary highways to 20,500 pounds an axle and an overall maximum gross weight of 50,000 pounds.

Vehicle Inspections (H. 3281, Rep. Spearman). Under this bill, mandatory vehicle safety inspections would no longer be required.

Teacher Certification Renewal Requirements (H. 3300, Rep. Neilson). This bill would exempt teachers with 17 or more years'

teaching experience from any further certification renewal requirements.

Minimum Salary Schedule for Teachers (H. 3303, Rep. Neilson). This bill would require the State Department of Education to develop a minimum salary schedule which would include minimum salaries for teachers with zero to 30 years' experience. This 30-year experience scale would be phased in based on a determination made each year in the Annual General Appropriations Act. During the phase-in period, the additional experience increments must not have the effect of reducing any existing pay increments.

Violations of Mandatory Seat Belt Law (H. 3305, Rep. Corning). Under this bill, the maximum fine imposed on someone for violating the state's mandatory seat belt law would increase from \$20 to \$25. Additionally, this bill would allow a law enforcement officer to stop a driver solely for violation of the state's mandatory seat belt law, regardless of whether or not another motor vehicle law was being violated. Under current state law, an officer cannot stop a driver for violation of this law unless the stop is made for another violation of the motor vehicle laws or if the stop is made in conjunction with a driver's license or registration check conducted at a checkpoint established to stop all drivers on a road for a period of time.

Age for School Attendance (H. 3310, Rep. Phillips). This bill would change from November 1 to September 1 the date by which a student enrolling in the kindergarten of a state public school in a given year must be age 5 and would change from November 1 to September 1 the date by which a student enrolling in the first grade of a state public school in a given year must be age 6. Furthermore, children would be required to enroll in kindergarten or other programs approved by the State Board of Education only if 5 years old as of September 1 (as currently opposed to November 1) of the year in which they seek to enroll. Finally, any parent or guardian whose child or ward is not age 6 by September 1 (as opposed to the current November 1) of a given school year could elect not to send the child or ward to kindergarten.

Judiciary

Tax and Fee Impositions and Increases (H. 3251, Rep. Cato). This joint resolution seeks to amend the Constitution so as to provide that any bill or resolution approved by the General Assembly which imposes or increases a tax or fee must be submitted to voters of the state for approval if the tax or fee imposition or increase did not receive the approval of 2/3 of the membership of the House and 2/3 of all Senate members.

Term Limits (H. 3252, Rep. Cato). This joint resolution seeks to amend the Constitution so as to limit members of the General Assembly to 12 consecutive years in office and state constitutional officers to 8 consecutive years in office. Those legislators or state constitutional officers serving in office at the time this amendment is ratified would be allowed to finish their term and then serve additional consecutive terms as this amendment provides for their respective offices. This amendment would also delete obsolete references pertaining to the election of state senators from each county of the state. For the purposes of this amendment, a person serving half or more of a term for which he was elected is deemed to have served the full term. If the General Assembly grants approval to this joint resolution (2/3 vote of all elected members of each chamber required for passage), then the proposed amendment would be submitted to voters in the next general election. If a majority of voters supports the amendment, then these term limits would become a part of the State Constitution.

Administrative Law Judges (H. 3259, Rep. Sheheen). This bill would create the South Carolina Administrative Law Judge Division (hereafter called Division), which would be an agency of the state Executive Branch. This Division consists of a chief administrative law judge and 5 associate administrative law judges. The bill provides for staggered, 6-year terms for these judges, who are appointed to specific seats of the division (numbered 1 through 6) by the governor, with the advice and consent of the General Assembly. If the chief judge, occupying seat number 1, is unable to act or if the position of chief judge should be vacant, the powers and functions of the chief judge must be exercised by the judge holding seat number 2.

In order to be eligible for the office of chief judge or associate judge for this Division, a person would have to meet state residency requirements, be at least age 26, and be either a certified public accountant or have been a licensed attorney-at-law for at least 5 years. The bill sets the salary for the judges and authorizes them to receive payments for mileage, per diem and subsistence. Persons holding these positions would be required to devote full time to their duties as an administrative law judge and could not practice law or accounting during their term in office nor could they be the partner or associate with anyone engaged in the practice of law or accounting with the state. No administrative judge would be allowed to sit in any case in which he may be interested or in which he may have been counsel. The chief judge would be responsible for administration of the Division and would assign cases to the Division's judges, including himself, and rotate and interchange the Division's judges among the state agencies and commissions in regard to which it is responsible for hearing contested cases. The chief judge also would assign judges to sit in 3-member panels to hear workers' compensation appeals from the single commissioner level.

The bill authorizes the employment of a clerk for the Division and support staff as authorized by the General Assembly in the

annual general appropriations act. The division would be allowed to ENGAGE stenographers for the transcribing of proceedings in which an administrative law judge presides. The General Assembly would be responsible for appropriating sufficient funds for the operation of the Division.

A judge of the Division would preside over all hearings of contested cases, as defined by state law, involving the State Department of Environmental Control, the State Alcoholic Beverage Control Commission, or State Tax Commission. The presiding judge, rather than the agency or commission involved in the case, would render the decision involving the contested case. These agencies or commissions would notify the Division of pending contested cases, at which time the chief judge would assign a judge to each contested case. Panels of 3 administrative law judges also would hear workers' compensation appeals from the single commissioner level, instead of a panel of the Workers' Compensation Commission or the full commission hearing the appeals. Decisions or orders of the judge or panels could be appealed directly to the Supreme Court. Additionally, decisions or orders of the judge or panels, although not published, would be available for public inspection unless confidentiality is allowed or required by law.

The bill states that hearings and proceedings concerning contested cases and workers' compensation appeals must be transcribed and open to the public unless confidentiality is allowed or required by law in cases involving the Tax Commission or the other agencies or commissions. The judges of the Division would begin hearing contested cases and workers' compensation appeals from the single commissioner level 6 months after the 6 judges of the Division have been appointed and qualify.

Although the Division would assume the function, duties and powers of the forementioned agencies and commissions in regard to determining contested cases, these agencies and commissions would continue to retain powers and duties concerning the setting of dates of contested cases and obtainment of evidence and testimony for and at these hearings. The functions, duties and powers of the Workers' Compensation Commission or its panels to review decisions made by single commissioners also are devolved to the Division's judges.

The judges of the Division would have the same power at chambers or in open hearing as would circuit court judges, and to issue remedial writs as necessary to give effect to its jurisdiction.

Although the Division's principal offices would be located in Columbia, the bill authorizes the Division's judges to hear contested cases at the offices or location of the involved agency or commission and to hear Workers' Compensation appeals hearings outside Columbia.

Consolidation of Law Enforcement Functions (H. 3260, Rep. Sheheen). Under this bill, the law enforcement functions of the Alcoholic Beverage Control Commission (ABC Commission), Highway Patrol and the Public Service Commission would be absorbed by the

State Law Enforcement Division (SLED). The chief of SLED would be appointed to a 10-year term, as opposed to the current requirement that the chief's term be coterminous with that of the appointing governor. The chief of SLED would be eligible to serve a second 10-year term, but under no circumstance would anyone be allowed to serve as chief of SLED for more than 20 years. The chief would be allowed to assign personnel of his division to particular areas of enforcement and could establish subdivisions within SLED to carry out particular duties as assigned by the chief. The Highway Patrol would become a subdivision of SLED upon the date this act became effective. Also on the effective date of the act, the employees, current appropriations, and personal property of the Highway Patrol and other law enforcement personnel of the Department of Highways and Public Transportation, the law enforcement department of the Public Service Commission and the law enforcement components of the ABC Commission made a part of SLED are transferred to SLED. Law enforcement personnel of the agencies transferred to SLED would continue to meet qualifications and criteria as formerly applied to them at their agencies., but would not automatically be considered to have been appointed SLED agents without further action on the part of the governor or chief of SLED. Fines, fees, forfeitures or revenues imposed or secured by these law enforcement personnel transferred to SLED would continue to be used for expended for those purposes as provided by law. If a portion of those fines, fees, forfeitures or revenues were required to be used for the support, benefit or expense of the transferred law enforcement personnel, the funds must continue to be used for those purposes.

Informed Decision for Abortion (H. 3267, Rep. Corning). This bill would prohibit an abortion from being performed or induced without the voluntary and informed decision of the woman seeking the procedure. Except in the case of a medical emergency, a decision to obtain an abortion would be voluntary and informed only if the following conditions are met:

(1) The woman seeking the abortion is informed by the physician scheduled to perform the abortion, the referring physician, or by an allied health professional working in conjunction with 1 of these physicians, of the medical risks associated with the abortion procedure and the probable gestational age of the unborn child at the time the abortion is to be performed;

(2) The woman is informed by the physician, his agent, or if the abortion is to be performed in a clinic, by the clinic's agent that she has the right to review printed materials provided by the State which would contain information on alternatives to abortion, including medical assistance benefits for prenatal care, childbirth and neonatal care, and information on the unborn child. The physician, his agent, or the clinic's agent would orally inform the woman that this printed material had been provided by the State, and if the woman decides to view the materials, a copy of the materials must be furnished to her;

(3) The woman, prior to the abortion, certifies in writing that she has been informed of the medical risks of the abortion procedure, the gestational age of the unborn child at the time the abortion is to be performed, and has been informed of the opportunity to review the printed materials as provided by the State.

(4) Before performing the abortion, the physician scheduled to perform the procedure receives a copy of the woman's certification as listed above.

Nothing in this bill would limit the information provided by the referring physician, the physician scheduled to perform the abortion, or allied health professional to the person seeking an abortion.

This bill also would prohibit an abortion from being performed any sooner than 24 hours after the informed decision is made, except in the case of a medical emergency.

The South Carolina Department of Health and Environmental Control (DHEC) would be responsible for ensuring the publishing of the materials which could be reviewed by a woman seeking an abortion prior to performance of that procedure. The materials must be made available to any person, facility or hospital at no cost and must also be easily comprehensible and legible. In providing a list of agencies and services which can help the woman before and after childbirth, the printed materials must describe the services they offer and how they may be contacted. In providing material about information on the unborn child, the information would inform the woman of the probable anatomical and physiological characteristics of the unborn child at 2-week intervals. This information must be objective, nonjudgmental, and designed to contain only accurate scientific information. The names, addresses and phone numbers of agencies providing benefits for prenatal care, child care and neonatal care must also be provided, and materials designed to inform the woman of mechanisms available for obtaining child support payments also must be provided.

In case of medical emergency, and if circumstances permit, the physician, prior to performing the abortion, would inform the woman of the medical indications supporting his judgment that the abortion is necessary to avert the risk of her death or immediate irreversible loss of major bodily function. The physician would then obtain her consent for the abortion.

Anyone performing or attempting to perform an abortion without following the provisions of this bill would be guilty of a misdemeanor, and upon conviction be fined between \$1,000 and \$5,000. A second or subsequent conviction for violation of these provisions would result in imprisonment of 1 year to 5 years and a fine of \$1,000 to \$5,000. Additionally, a woman on whom an abortion has been performed without her informed and voluntary consent could sue the person who performed the procedure for \$5,000 in punitive damages and triple whatever actual damages she may have sustained. In a civil or criminal proceeding or action resulting from violation of these provisions, it would be up to the court to decide whether the anonymity of the woman upon whom an abortion was

performed or attempted should be preserved from public disclosure if she does not consent to such disclosure. In the absence of the written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings action under the bill's provisions would do so under a pseudonym.

Premarital Agreements (H. 3270, Rep. McElveen). This bill would authorize prospective spouses contemplating marriage to draw up an agreement concerning how they will handle property, financial or other matters while married or in case divorce, separation or other event should happen. The bill defines premarital agreement as an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. A premarital agreement would have to be in writing, with a statement of assets and income of each party attached to it, and would have to be signed by both parties. The bill lists matters which may be included in the agreement, examples of which include the disposition of property upon separation, divorce, death or the occurrence or nonoccurrence of another event, and the rights and obligations of each party in any of the property of either or both of them whenever and wherever acquired or located. A premarital agreement, however, could not adversely affect the right of a child to support.

Although a premarital agreement would become effective upon marriage of the parties, the agreement could be amended or revoked by a written agreement signed by both parties. If a party seeks to set aside a premarital agreement, the party must prove that the agreement is unenforceable. An agreement would be determined to be unenforceable if the party proves the agreement was executed involuntarily, was unconscionable at the time enforcement was sought, or if the party, before execution of the agreement:

- (a) was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party;
- (b) did not voluntarily and expressly waive, in writing, a right to disclosure of the property or financial obligations of the other party beyond the disclosure required;
- (c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or
- (d) did not consult with independent legal counsel or did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

The issue of unconscionability of a premarital agreement would be determined by the court as a matter of law. The bill defines an unconscionable premarital agreement as an agreement which, either due to a lack of property or unemployability, would render a spouse without a means of reasonable support; would make a spouse a public charge; or would provide a standard of living far below that which was enjoyed before marriage.

Application for Divorce (H. 3274, Rep. Kirsh). This bill would shorten the period necessary for a couple to be continuously

separated before a party applies for divorce from 1 year to 6 months.

Challenges to Annexations (H. 3282, Rep. Wright). Under this bill, if a municipality annexes territory in a county, a civil action challenging the validity of the annexation could be initiated by a municipality, special purpose district or public service district located entirely or partially in the county in which the annexation has occurred, and by the county in which the annexation has occurred. This bill would apply to annexations occurring after September 30, 1989.

Recovery of Losses from Playing Coin-Operated Machines (H. 3285, Rep. Keegan). This bill would amend current state law so as to prohibit players of coin-operated, non-payout machines with a free play feature from suing to recover their losses.

Term Limits (H. 3290, Rep. Klauber). Virtually identical to H. 3252, this joint resolutions seeks to amend the Constitution so as to limit members of the General Assembly to 12 consecutive years in office and state constitutional officers to 8 consecutive years in office. Like H. 3252, those serving in office at the time these limits went into effect would be allowed to finish their current term and then serve additional consecutive terms as permitted by the amendment. Unlike H. 3252, however, H. 3290 does not have a provision stating that a person who has served half or more of the term to which he was elected is deemed to have served a full term. If this joint resolution is approved by the General Assembly, the constitutional amendment would be submitted to the voters in the next general election.

Testing for Alcohol in Persons under 21 (H. 3291, Rep. Fair). Under this bill, anyone under age 21 operating a motor vehicle with a blood alcohol content of .01 percent or greater by weight would be guilty of a misdemeanor, and upon conviction would serve a minimum of 80 hours of public service employment as determined by the court. This bill also provides for the suspension of licenses of those under age 21 who operate a motor vehicle with a blood alcohol content of .01 percent or greater. Anyone under age 21 operating a motor vehicle in this state, under this bill, is considered to have given consent to chemical tests for the purpose of determining the presence of alcohol. A test must be administered at the direction of a law enforcement officer who believes the minor has this blood alcohol content. The bill describes the procedures for conducting the tests as well as the qualifications of those administering the tests. If the person under 21 refuses to submit to testing, the Department of Highways and Public Transportation would suspend his license or permit to drive, or any nonresident's operating privilege for 1 year. If the defendant under arrest submits to chemical tests and the results indicate a blood alcohol content of .01 percent or greater, the Department

would suspend his license or permit to drive or any nonresident's operating privilege for 1 year. If the person is a resident without a license or permit to operate a motor vehicle in South Carolina, the Department would deny that person issuance of a license or permit for 1 year after he otherwise would be eligible to be licensed. No tests could be administered or samples taken unless the person has been informed that he does not have to take the test or give samples, but that his privilege to drive must be suspended for at least 1 year if he refuses to submit to test, or if he submits to the test and it is determined that his blood alcohol content is .01 percent or greater.

The arresting officer would promptly notify the Department of the refusal of the person to submit to a test as well as the test results of someone who submits to the test with a blood alcohol content of .01 percent or greater. A person whose license or permit to drive has been suspended could seek administrative review of the suspension. If a review is sought, a written request must be submitted to the Department within 10 days of the order of suspension. If a request is not submitted, the right to a hearing is waived and the determination of the Department, based on the arresting officer's report, becomes final. If the person requesting the hearing fails to appear without just cause, his right to a hearing is waived and the determination based on the arresting officer's report becomes final.

The only issues to be considered in an administrative review on the refusal to take the chemical test are whether (1) the person was placed under arrest; (2) the person was informed that he did not have to take the test, but that his privilege to drive would be suspended or denied if he refused to submit to the test; and (3) the person refused to submit to the test upon request of the arresting officer.

The only issues to be considered in an administrative review on the operation of a motor vehicle while the blood alcohol content of the person under age 21 was .01 percent or greater are whether (1) the person was placed under arrest; (2) the person was advised of the consequences of registering a blood alcohol content of .01 percent or greater; (3) the person registered a blood alcohol content of .01 percent or greater; (4) the individual taking test samples was qualified; and (5) the samples given and tests administered were conducted properly.

The Department, after administrative review, would order the suspension, or determination that there should be a denial of issuance, either be rescinded or sustained.

Those tested under these provisions could also request additional tests, at his expense, conducted by a qualified person of his choosing. However, a person's failure to request additional tests would not be admissible against the person in the criminal trial. The failure or inability of the person tested to obtain additional tests would not preclude admission of evidence relating to tests or samples taken at the direction of the law enforcement officer. A person who is unconscious or otherwise in a condition rendering him incapable of refusing a test is considered to be

informed and not to have withdrawn consent for the test.

When it is determined that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the Department would provide this information to the motor vehicle administrator of the state of the person's residence and to any state where he has a license. Persons required to submit to tests must be provided a written report including the time of the incident, the time of tests, and results of the tests before the imposition of suspension. The person administering the test, at the defendant's request, would record, in writing, the time, method and results of the test and promptly furnish a copy to the arresting officer. A person whose license is suspended under these provisions is not required to file proof of financial responsibility. Penalties imposed under these provisions are in addition to any other penalties that may apply under state law.

DUI Criminal Proceedings (H. 3292, Rep. Fair). This bill is similar to H. 3204 in that it lowers the percentage of alcohol in a person's blood used to create presumptions in a criminal prosecution of DUI. Like H. 3204, H. 3292 would do the following: (1) Lower the blood alcohol content necessary to presume conclusively that a person was not under the influence of alcohol from .05 percent or less to .03 percent or less; (2) Lower the range for which a blood alcohol content would not infer whether a person was or was not under the influence of alcohol from greater than .05 percent but less than .10 percent to greater than .03 percent but less than .08 percent; and (3) Lower the minimum blood alcohol content necessary to infer that a person was under the influence of alcohol from .10 percent to .08 percent and require that it be inferred that anyone with a blood alcohol content of .08 percent or greater was under the influence of alcohol. (Current law states that it may be inferred that a person was under the influence of alcohol if his blood alcohol content was .10 percent or greater.)

Unlike H. 3204, however, H. 3292 does not provide a transition period for these reductions. (H. 3204, for example, would lower the minimum level necessary to presume someone was under the influence of alcohol from .10 percent to .09 percent in 1993 and then lower the figure to .08 percent in 1994.)

Chemical Tests after Accidents (H. 3293, Rep. Fair). This bill would require anyone who operates a motor vehicle in an accident which results in death or serious injury to himself or someone else be tested for the presence of alcohol and drugs. The testing is mandatory, and the person or his personal representative could not refuse to take the test. Furthermore, the test results could be used as evidence in a criminal proceeding.

Suspension of Drivers' License (H. 3294, Rep. Fair). This bill would require anyone charged with any one of various offenses pertaining to unlawful possession, sale and consumption of alcohol, fraudulent use of drivers' license or refusal to surrender a

drivers' license, and who is accepted into a pretrial intervention program must have his license suspended as if he had been convicted of the offense. The circuit solicitor would report to the Department of Highways and Public Transportation the acceptance into a pretrial intervention program of a person charged with 1 of these offenses.

Abolishment of Alcoholic Beverage Control Commission (H. 3297, Rep. Wilkins). This bill would abolish the State Alcoholic Beverage Control Commission (ABC Commission) as a separate agency or department of state government as of July 1, 1993. The commission's powers, rights and functions concerning licensing and assessment of penalties for administrative violation of law or regulations would be transferred to the South Carolina Tax Commission, while the ABC Commission's powers, rights and functions concerning law enforcement, regulation enforcement and inspections are transferred to the State Law Enforcement Division (SLED). The property of the ABC Commission used to exercise its powers and functions would be apportioned between the Tax Commission and SLED, as determined by the State Budget and Control Board. ABC Commission personnel engaged in carrying out the commission's powers, duties and functions would have priority for positions necessary to perform the responsibilities which are transferred to SLED and the State Tax Commission. Law enforcement personnel of the ABC Commission who are transferred to SLED under this bill would continue to meet those qualifications and criteria as formerly applied to them at the ABC Commission but would automatically be considered to have been appointed SLED agents unless further action to accomplish this has been taken by the governor or chief of SLED.

Fines, fees, forfeitures or revenues imposed by the divisions of the ABC Commission would be transferred to SLED or to the Tax Commission, depending on the nature of the fees and as dictated by the State Budget and Control Board. These fines, fees, forfeitures or revenues would continue to be used and expended for these purposes as provided by law.

The bill provides for establishment of a South Carolina Alcoholic Beverage Control Hearing Officer (ABC hearing officer). This post would be located within the Tax Commission to perform adjudicatory functions previously under the preview of the ABC Commission. The terms of the ABC Commission's members would terminate upon implementation of this legislation.

The ABC hearing officer would be appointed by the governor, with the advice and consent of the Senate, for a term of 6 years. The officer could serve a maximum of 2 full 6-year terms. The officer would be paid by and located within the Tax Commission, which would provide personnel and property from existing ABC Commission assets necessary to perform his duties as hearing officer. The officer, who would serve at the pleasure of the governor, would be required to be an attorney admitted to the profession for at least 5 years. His salary would be set at 90 percent of the salary of a circuit court judge. Vacancies would be filled in the same manner as the original appointment. The hearing

officer would be allowed, if necessary, to designate a temporary hearing officer who would hear matters considered appropriate by the hearing officer. This temporary hearing officer would be retained for those limited purposes designated by the hearing officer at an hourly rate approved by the Attorney General. The appointment of a temporary hearing officer would also have to be approved by the Tax Commission chairman. This hearing officer could not be employed by the Tax Commission or by the agency bringing the enforcement action or have any connection with the preparation or presentation of evidence for the hearing for which he acts as temporary hearing officer.

The ABC hearing officer would have several duties. He would be allowed to impose a monetary penalty as an alternate to revocation or suspension in cases where the hearing officer has the authority to suspend or revoke a license or permit. (The hearing officer also could also suspend payment of the monetary penalty imposed.) The ABC hearing officer also could conduct hearings on protested applications and contested violations, administer oaths, issue subpoenas requiring the attendance of witnesses and the production of documents for consideration at hearings or before a law enforcement officer, and authorize another person to hold and conduct hearings, issue subpoenas, and administer oaths and take testimony.

In order to enforce regulations governing alcoholic beverages and beer and wine in the state, SLED's Division of Alcoholic Beverage Control would be authorized to employ 11 investigators and other necessary administrative personnel who would function under SLED. No members or employees of SLED, or licensing or adjudicatory positions within the Tax Commission would be allowed, directly or indirectly, to have any interest in the manufacture or of dealing in alcoholic liquors or in any enterprise or industry in which alcoholic liquors are regulated; receive any commission or profit on the purchase or sale of alcoholic liquors by any person; or have any interest in or mortgage or deed of trust on any land or building where alcoholic liquors are manufactured or offered for sale or sold in any personal property used for these purposes.

A decision made by an ABC hearing officer which revokes or suspends a license or permit or imposes a monetary penalty in lieu of revoking or suspending a license or permit may be appealed to the Tax Commission. Any monetary penalty imposed could be paid under protest. Notice of an appeal would be served on the Tax Commission within 10 days after receipt of notification of a decision. Appeals from a decision of the Tax Commission would go to the Court of Common Pleas for the county of the appellant's residence or for Richland County.

A person issued an alcohol license or permit would surrender the license or permit upon the request of the Tax Commission, and all licenses and permits would be immediately surrendered to the Tax Commission upon termination of business, or upon a change of ownership, possession or control of a corporation or business entity, or upon a change in the character of a property, facilities, or nature of business activity for which a license or

permit has been obtained. Furthermore, the ABC hearing officer, on behalf of the Tax Commission, would be allowed to suspend or revoke all other licenses or permits held by a person whose license or permit has been suspended or revoked for a particular premises if the suspended or revoked premises is within close proximity to the places for which he holds other licenses or permits.

Drug Testing of State Employees (H. 3301, Rep. Neilson). This bill would authorize drug testing both for state employees and for those seeking to become state employees. Under this bill, a state employee (hereafter referred to as "employee") required by his state employer (hereafter called "employer") to submit to a drug test must be provided a written policy statement from the employer at least 30 days before the implementation of a drug testing program. The policy statement, among other things, must contain a general statement of the employer's policy on employee drug use, which must identify both the grounds on which an employee is required to submit to a drug test and the actions the employer may take against the employee on the basis of a positive confirmed drug test result, or other violation of the employer's drug use policy. The employee must also be warned about the consequences of refusing to submit to a drug test.

Employers could require job applicants to submit to a drug test as a condition of the employment application and could use a refusal to submit to a test or a positive confirmed test result as a basis for refusal to hire that employee. Reasonable suspicion drug testing would also be authorized, a situation in which an employer could require all employees to submit to a drug test based on the employer's reasonable suspicion that an employee is using illegal drugs. The bill also authorizes neutral selection, routine and follow-up drug testing. An employer could require an employee to submit to a drug test on a neutral selection basis when the nature of the employee's position would create a health or safety risk to the employee, fellow employees, or the public, or a security risk in the workplace, should the employee be affected by use of the drug. The employer also could require an employee to submit to a neutral selection or routine drug test if the test is conducted as part of a routinely scheduled employee fitness for duty medical examination that is part of the employer's establish policy or which is scheduled routinely for all members of an employment classification or group. An employee could be required to submit to a neutral selection or routine drug test also if during the course of his employment he enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug testing of the employee within a 12-month period resulted in a positive confirmed test result. If the employee is participating in drug abuse rehabilitation, drug testing could be conducted by the rehabilitation provider as considered appropriate by the provider.

The bill then lists procedures for conducting the tests and documenting and storing the results. The State Budget and Control Board would ensure that a program to conduct on-site drug tests in

the workplace is established. Any drug testing conducted or requested by the employer would be done during or immediately after the regular work period of current employees. If a drug test yields a positive result, the employee would be allowed at his expense to have his specimen retested. An employer would not be allowed to discharge, discipline, refuse to hire, or request or require rehabilitation of an employee on the basis of a positive test result that had not been verified by a confirmatory test. Furthermore, an employer could not discharge, discipline, or discriminate against an employee testing positive for drugs for the first time while working for the employer unless (a) the employer had first given the employee an opportunity to participate in drug abuse assessment or rehabilitation, and the employee had refused to participate in either the assessment or rehabilitation program or had failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or a report indicating unsatisfactory compliance, or by a confirmatory drug test indicating a positive result; or (b) the employee's work performance had been inadequate, or the employee had caused or contributed to an accident, or the employee had taken or omitted to take any other action which ordinarily would result in the discharge of the employee. The employer would pay the costs of all drug tests to which he requires or requests an employee or job applicant to submit.

An employee or job applicant whose drug test result is confirmed as positive could not because of that result alone be defined as a person with a handicap. An employer who discharges or disciplines an employee on the basis of a positive confirmed drug test is considered to have discharged or disciplined the employee for cause. This bill would not be retroactive and would not deny the right of an employer to conduct drug testing before the bill went into effect. If an employee refuses to submit to drug testing, the employer would not be barred from discharging, disciplining or referring the employee to either assessment or drug abuse rehabilitation. An employer, in addition to any appropriate personnel actions, could refer the employee violating the employer's policy on drug use to an employee assistance program for assessment, counseling and referral for treatment or rehabilitation. An employer would be allowed to temporarily suspend or transfer an employee to another position after obtaining the results of a positive on-site initial test or positive confirmed test if the employee's position is one which would create a health or safety risk to the employee, fellow employees, or to the public, should the employee be affected by use of the drug.

The bill also lists provisions concerning the confidentiality of drug test results and communications and the information which must be contained in lab reports sent to the employer with regard to an employee's drug test results.

Anyone alleging violation of these provisions could seek damages or injunctive relief in circuit court. Damages would be limited to the recovery of compensatory damages directly resulting from injury or loss caused by each violation, and would not include

noneconomic losses. Relief could include, as examples, reinstatement of the person to the same position held before the unlawful drug testing, disciplinary action or discharge, or to an equivalent position, or the reinstatement of full employee benefits and seniority rights.

An employer complying with the bill's provisions, however, would be immune from all civil actions arising from any drug testing programs or procedures performed in accordance with these provisions.

Petit Jurors Selection (S. 3, Sen. Williams). This bill would amend state law so as to require that jury commissioners draw at least 75 petit jurors to serve for each week during the regular or special term of the circuit court. The chief administrative judge or the presiding judge of the circuit could increase or decrease the number of jurors drawn if he considered it necessary; however, at least 75 jurors would have to be drawn. Furthermore, jury commissioners would draw and summon at least 75 people to serve as petit jurors to attend at one and the same time at any circuit court. The chief administrative judge or the presiding judge of the circuit could increase or decrease the number of jurors drawn and summoned if he considers it necessary; however, at least 75 jurors would have to be drawn and summoned.

Petitions in Special Purpose Districts (S. 31, Sen. Moore). This bill amends current state law with regard to the election of commissioners of special purpose districts, so as to require a candidate for the post to obtain on a petition the signatures of at least 50 qualified electors or 5 percent of the qualified electors of the district, whichever is lesser.

Labor, Commerce and Industry

Administrative Tax Process (H. 3250, Rep. Hallman). This bill would amend state law so as to allow taxpayers to be represented by a registered, certified and licensed real estate appraiser during an administrative tax process. As affects this bill, the administrative tax process includes all matters connected with presentation to any state or local authority or their officials or employees relating to a client's rights, privileges or liabilities under laws, regulations or rules administered by state or local tax authorities.

Retail Signs (H. 3253, Rep. Stoddard). This bill would allow any retail business licensed to do business in South Carolina to display "Open" and "Closed" signs in its window if not in conflict with a local ordinance.

Workers' Compensation Claims of Firemen (H. 3265, Rep. Quinn). This bill clarifies which firemen are eligible for workers' compensation claims because of impairment or injury to a fireman's

health cause by heart or respiratory disease so as to include both paid and volunteer firemen. The bill also changes from May 29, 1968 to December 31, 1992 the date after which a fireman, in order to be entitled to the presumption that the above-mentioned diseases resulted from his employment, must be under age 37 and must have successfully passed a physical examination which failed to indicate any evidence of the disease prior to fighting a fire.

Applications for Alcohol Licenses (H. 3272, Rep. Fair). This bill would require that a person applying for a manufacturer's, wholesaler's or retail license from the Alcoholic Beverage Control Commission be the same person who will have actual control and management of the business proposed to be operated.

Study of Home Ownership Loans (H. 3273, Rep. Whipper). This bill would require the South Carolina State Housing, Finance and Development Authority to complete a statistical study of the make-up of applicants and recipients for the Authority's home ownership loans. At a minimum, the study must review the characteristics of the authority's applicants and mortgage recipients by the categories of race, single parents, sex, income and location of houses for which the authority holds mortgages in this state. The study would be furnished annually to the House and Senate Labor, Commerce and Industry Committees no later than January 2 of each year, beginning in 1994.

Revocation of Alcohol Licenses (H. 3288). This bill would require the Alcoholic Beverage Control Commission to revoke a license it has issued to anyone who since has been convicted of selling alcoholic liquors to a person under age 21.

Sunday Beer and Wine Sales (H. 3306, Rep. Corning). This bill would authorize retailers to sell beer and wine on Sundays for off-premises consumption provided they obtain a special permit from the Alcohol Beverage Commission. This annual permit would cost \$2,500. The bill authorizes the permit to be issued on a quarterly basis, with the dates and fees adjusted accordingly.

Medical, Military, Public and Municipal Affairs

Auction of Stolen or Abandoned Property (H. 3295, Rep. Tucker). This bill would shorten from 180 days to 60 days the length of time a sheriff or police chief must hold stolen or abandoned property before selling the property at public auction.

Education Requirements of AFDC Recipients (H. 3308, Rep. McElveen). This bill would require a recipient of Aid to Families with Dependent Children (AFDC) who is a parent, is under age 22 and has not obtained a state high school diploma or its equivalent to enroll in a course of study which will lead to obtainment of a high school diploma or its equivalent. This course of study must be

approved by the State Department of Social Services (DSS). If the recipient has more than 2 unexcused absences from the course in any 1 month, \$50 would be withheld from the recipient's monthly AFDC grant. If the recipient fails to enroll in high school or another course of study, the recipient would forfeit 1/3 of the AFDC grant. The prescribed amount for the unexcused absences would be withheld from the grant cumulatively for every month in which more than 2 unexcused absences occur. The AFDC recipient would be entitled to a bonus for successful completion of the course, with the amount of the bonus and the conditions prescribed by DSS. DSS would promulgate regulations to enforce these provisions, including uniform definitions for "unexcused absence" and provisions for notifying the agency disbursing AFDC grants in the event the recipient fails to enroll in a course.

Ways and Means

Sales Tax Exemptions (H. 3268, Rep. Baxley). This bill would expand the list of items and services exempt from sales tax so as to include combustible heating material or substance used for residential purposes in outbuildings on residential property. This exemption would not apply, however, if the outbuildings are used for business purposes.

Sales Tax on Motor Vehicles (H. 3277, Rep. Corning). Under this bill, the sales tax rate imposed on motor vehicles would drop from 5 percent to 3.15 percent, and the maximum sales tax imposed on the sale or lease of a motor vehicle or motorcycle would rise from \$300 to \$1,500. This would not apply, however, to trailers or semitrailers, recreational vehicles, or self-propelled light construction equipment, whose sales tax rate would continue to be 5 percent, with a maximum sales tax imposed of \$300. Commercial vehicles with a manufacturer's gross vehicle weight rating in excess of 10,000 pounds also would pay the 5 percent sales tax, with a maximum sales tax of \$300. In the case of a lease of a motor vehicle or motorcycle subject to the 3.15 percent sales tax, the total tax rate as required by law would apply to each payment until the total tax paid equalled the maximum tax, although the person leasing the vehicle would have the option of paying the total tax due at the time of the lease.

Job Limits for State Employees (H. 3279, Rep. Vaughn). This bill would prohibit anyone employed in state government in a full-time salaried position from receiving compensation from any other state government agency or department, including institutions of higher learning. These provisions would not apply, however, to per diem, mileage or subsistence payments received while performing responsibilities or to compensation received for service in a state public office filled by popular election.

Study of State Government (H. 3283, Rep. McElveen). This joint

resolution would require the State Reorganization Commission and the Legislative Audit Council to conduct a joint study of state government for the purpose of making state government more efficient, effective and accountable to South Carolinians. In conducting this study, the Commission and Council will make recommendations (1) to implement changes that would make state government more efficient, effective and accountable; (2) to eliminate the unnecessary duplication of government services and administration by streamlining state government; (3) to consolidate agencies' functions and administration wherever this consolidation is both feasible and desirable; (4) to study the desirability of implementing Total Quality Management (TQM) in state government; and (5) to study the regency system of higher education and other organizational structures of other states' higher education systems in order to compare to South Carolina's present system for the purpose of the possible reorganization of South Carolina's system of higher education.

In conducting the study, the Commission and the Council would give consideration to recent reports of the committee on the future of South Carolina and the Commission on Government Restructuring. The Commission and Council also would delay or suspend all sunset review, other projects and activities as necessary to ensure that the study's goals are accomplished in a timely manner. If additional funding is deemed necessary, the commission and council would request and justify this funding in the annual appropriation process.

In order to conduct this study, agencies and departments of 8 divisions are studied---(1) Transportation; (2) Health and Human Services, Environmental and Health Services; (3) Public Instruction, Higher Education; (4) Administration, Adjutant General; (5) Corrections, Rehabilitation, Public Safety; (6) Commerce, Natural Resources, Agriculture; and (7) Literary and Cultural Affairs, Employment Services. Studies of each division would be done on a staggered basis between 1993 and 1998. The process of studying each division would begin with the Legislative Audit Council conducting an audit of the agencies and departments falling within a division and then reporting the results of the audit to the State Reorganization Commission. The Commission would examine the report and make a recommendation as to any desirable reorganization or consolidation of agencies or departments examined in the report, with these recommendations submitted to the governor and to the General Assembly. Based on the Commission's reports, the General Assembly would either reauthorize, restructure or terminate agencies.

The bill specifies that any public authority or entity established by state law, including the State Ports Authority, the South Carolina Research Authority, the State Public Railways Commission, and the South Carolina Public Service Authority, whose funding and revenues are not expended or appropriated by the General Assembly in the annual state general appropriations act, are deemed to fall under the commerce division and must be studied and audited as other state agencies and departments coming within

the commerce division.

The Reorganization Commission would meet each fiscal year at least once at a central location in each of the state's congressional districts during evening hours so as to assure maximum citizen participation, discuss and receive public input on the need for government reorganization and ideas on how to best structure an effective, efficient and accountable state government.

Deductions for Child Support (H. 3296, Rep. Lanford). This bill would allow a non-custodial parent, when filing his state income tax, to deduct any child support he pays pursuant to an order of a South Carolina Family Court.

Rollback Tax (H. 3302, Rep. Neilson). This bill would require, in every sale of real property classified as agricultural real property for purposes of ad valorem taxation, that the seller notify the purchaser in writing no later than completion of the closing that the property may be subject to a rollback tax. Failure to comply with these provisions would result in the seller being liable to the purchaser for the amount of the rollback tax assessed to the purchaser as a result of the change in use of the property.

Prioritization of Appropriations (H. 3309, Rep. McElveen). Under this bill, after the state's Capital Reserve Fund has been exhausted for the purpose of offsetting midyear budget reductions, the State Budget and Control Board, for the purpose of avoiding a year-end deficit, could reduce appropriations based on categories of priorities. Total appropriations would be identified and segregated into categories "A," "B" and "C", with A representing the highest and most protected category and C representing the lowest priority. Beginning with category C, appropriations in each category would be reduced on a pro-rata basis, until appropriations are equal to or less than revenues. Reductions could not be ordered in a higher priority category until all appropriations in lower priority categories had been eliminated. General fund appropriations for debt service, however, would be exempt from board-ordered reductions. Except as otherwise provided by law for a specific state agency, state agencies would be allowed to carry forward to the succeeding fiscal year 80 percent of unexpended appropriations. These carryforward funds could be used for any purposes for which other funds are appropriated for the use of the agency.

State agencies could consolidate existing full-time equivalent positions authorized for the agency and redistribute the applicable salary funds in the manner the agency head determines the most efficient use of these funds, including salary increases. If a salary increase for a classified employee exceeds the salary range authorized for the classification, the position must be reclassified to reflect the higher salary.

Without Reference

Dissolution of Rural Water Districts (H. 3280, Rep. Sheheen). This bill would provide 2 procedures for dissolving a rural community water district. Under one procedure, a district could be dissolved upon the verification by the district's governing body of a petition signed by at least 75 percent of the district's resident customers (excluding corporations) requesting the district's dissolution and identifying the assuming service provider. Under the other procedure, the district could be dissolved following (1) verification of a petition signed by at least 25 percent of the district's resident customers requesting dissolution of the district and identifying the assuming service provider and (2) a subsequent election in which at least 60 percent of the district's resident users (excluding corporations) voting in the referendum request dissolution of the district and its transfer to the assuming service provider. Regardless of which procedure is used, the dissolution of the district would be effective upon the assumption, by ordinance if assumed by a county or municipality, or by resolution if assumed by a special purpose district or nonprofit corporation, of all debts and obligations by the governing body of the assuming service provider. An assuming service provider would have to be located in the county where the district is located or be authorized to serve a contiguous area. For the purposes of this bill, "assuming service provider," is defined as a county, municipality, special purpose district, or a corporation not for profit which, upon its original organization, is financed in whole or in part by a loan made under the provisions of the Consolidated Farmers Home Administration Act of 1961, as amended by the Food and Agriculture Act of 1962 and amendatory acts.

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